

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 462 be amended to read as follows:

- 1 Page 2, between lines 20 and 21, begin a new paragraph and
- 2 insert:
- 3 "SECTION 2. IC 5-2-6.2 IS ADDED TO THE INDIANA CODE AS A
- 4 NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 5 2003]:
- 6 Chapter 6.2. Compensation for Victims of Child Sexuality
- 7 Experiments
- 8 Sec. 1. As used in this chapter, "child sexuality experiment"
- 9 refers to the observation, study, or recording of a child (as defined
- 10 in IC 35-47-10-3) who:
- 11 (1) was a victim of a sex crime under IC 35-42-4;
- 12 (2) engaged in sexual contact (as defined in IC 25-1-9-3.5); or
- 13 (3) engaged in autoerotic behavior;
- 14 for use or publication in Sexual Behavior in the Human Male or
- 15 Sexual Behavior in the Human Female by Alfred Kinsey.
- 16 Sec. 2. As used in this chapter, "division" refers to the victim
- 17 services division of the Indiana criminal justice institute.
- 18 Sec. 3. As used in this chapter, "fund" refers to the violent
- 19 crime victims compensation fund established by IC 5-2-6.1-40.
- 20 Sec. 4. The division shall do the following:
- 21 (1) Prescribe forms for processing applications for
- 22 assistance.

1 (2) Make determinations on applications for assistance filed
2 under this chapter and investigate or reopen cases as
3 necessary.

4 Sec. 5. The division may do the following:

5 (1) Hold hearings, administer oaths, examine any person
6 under oath, issue subpoenas requiring the attendance and
7 giving of testimony of witnesses, and require the production
8 of books, papers, and documentary or other evidence. The
9 subpoena powers provided in this subdivision may be
10 exercised only by the director of the division or the director's
11 designated representative.

12 (2) Take or cause to be taken affidavits or depositions.

13 Sec. 6. (a) A person who seeks compensation under this
14 chapter may file an application with the division at any time.

15 (b) The application must be filed in the office of the division in
16 person or by certified mail. If requested, the division shall assist a
17 person in preparing the application.

18 (c) The division shall accept all applications filed in compliance
19 with this chapter. The division shall promptly begin an
20 investigation and processing of an application.

21 Sec. 7. (a) If the division determines that a person was the
22 victim of a child sexuality experiment, the division shall make an
23 award from the fund under subsection (b).

24 (b) The division shall determine compensation based on:

25 (1) psychological or medical expenses; and

26 (2) emotional distress;

27 incurred as a result of being a victim of a child sexuality
28 experiment.

29 (c) A direct physical impact or contemporaneous physical
30 injury is not required for payment of compensation under
31 subsection (b)(2).

32 Sec. 8. (a) The division shall employ sufficient hearing officers
33 to review each application for an award.

34 (b) A hearing officer must have at least three (3) semesters of
35 legal training at an accredited law school or have equivalent
36 training and experience under standards prescribed by the
37 director.

38 Sec. 9. (a) The division shall review all applications to ensure
39 that the applications are complete.

40 (b) If an application is not complete, the application shall be
41 returned to the applicant with a brief statement of the additional
42 information required.

43 (c) The applicant may, not more than thirty (30) days after
44 receipt of the request for additional information, either supply the
45 information or appeal to the director.

46 (d) The decision of the director on an appeal under subsection
47 (c) is final.

48 (e) If:

49 (1) the applicant does not furnish additional information
50 when an application is returned under subsection (b);

51 (2) additional time is not granted by the director for good
52 cause; or

1 (3) the applicant does not appeal the request under
 2 subsection (c) not later than thirty (30) days after the
 3 request;
 4 the application shall be denied.

5 Sec. 10. (a) A hearing officer may hold a hearing concerning
 6 the merits of the application to allow any interested person to
 7 appear to offer evidence and argument on any issue relevant to the
 8 application or to the facts surrounding the child sexuality
 9 experiment upon which the application is based.

10 (b) If a hearing is held, the person who filed the application
 11 shall be notified in writing by certified mail with return receipt
 12 requested fifteen (15) days in advance concerning the date, time,
 13 place, and scope of the hearing in accordance with IC 4-21.5-3.

14 (c) A hearing must be open to the public unless the hearing
 15 officer, in consultation with the director, determines that the
 16 hearing or a part of the hearing should be held in private in the
 17 interest of the victim or society.

18 Sec. 11. (a) Not more than ten (10) days after the hearing, the
 19 hearing officer shall issue a written determination supported by
 20 findings of fact and conclusions of law based on the record from
 21 the hearing, the investigation, and the application of the claimant.

22 (b) Copies of the determination shall be mailed to the person
 23 who filed the application at the address given in the application
 24 and to the attorney general.

25 Sec. 12. (a) The state or a claimant may appeal the findings of
 26 the hearing officer not more than twenty-one (21) days after the
 27 date of receipt of the findings by filing a written petition with the
 28 director.

29 (b) If an appeal is filed, the director shall review the matter
 30 and place the appeal on the docket for review by the division.

31 Sec. 13. A proceeding under this chapter must be according to
 32 procedures adopted by the division.

33 Sec. 14. A hearing officer may not deny an award without
 34 providing a person who files an application with an opportunity for
 35 a hearing.

36 Sec. 15. (a) The division shall reduce an award made under
 37 section 7(b)(1) of this chapter by the amount of benefits received if:

38 (1) the benefits are paid:

39 (A) by a third party;

40 (B) from a public or private pension program, including
 41 Social Security benefits;

42 (C) from an insurance policy; or

43 (D) from another public fund;

44 for medical or psychological services; and

45 (2) the medical or psychological services are provided as a
 46 result of a child sexuality experiment.

47 Compensation must be further reduced or denied under section
 48 7(b)(1) of this chapter to the extent that the person's loss is
 49 recouped from other collateral sources.

50 (b) The division shall determine whether the victim vigorously

1 pursued recovery against available collateral sources described in
2 this section.

3 (c) If the division finds that a victim has failed to pursue an
4 applicable collateral source of recovery, the division shall reduce
5 or deny an award under section 7(b)(1) of this chapter by the
6 amount that is available to the victim through the collateral source.

7 Sec. 16. The division shall reduce or deny an award under
8 section 7(b)(2) of this chapter if the person who filed an application
9 was previously paid damages as a result of an agreement or
10 judgment for infliction of emotional distress based upon the child
11 sexuality experiment.

12 Sec. 17. If a person receives an award under this chapter that
13 includes an amount to be deducted under section 15 or 16 of this
14 chapter, the person shall refund to the state the amount of
15 overpayment.

16 Sec. 18. (a) An award under this chapter may not exceed
17 fifteen thousand dollars (\$15,000).

18 (b) The part of an award covering an unpaid bill shall be paid
19 jointly to the claimant and to the creditor on that bill.

20 Sec. 19. (a) As part of the award the division shall determine
21 any attorney's fees commensurate with services rendered to the
22 victim of the child sexuality experiment.

23 (b) Attorney's fees must be included in the award but may not
24 exceed any of the following:

25 (1) Fifteen percent (15%) of the total amount of an award of
26 less than five thousand dollars (\$5,000).

27 (2) Ten percent (10%) of the total amount of an award of at
28 least five thousand dollars (\$5,000).

29 (c) An attorney who knowingly contracts for or receives a fee
30 larger than the amount determined by the division:

31 (1) commits a Class A misdemeanor; and

32 (2) forfeits the attorney's fee for representing the victim.

33 Sec. 20. An award made by the division to a victim is not
34 subject to execution, attachment, garnishment, or other process,
35 except the claim of a creditor to the extent that the costs were
36 included in the award.

37 Sec. 21. (a) If the division determines that an award from the
38 fund becomes final during a month, the division shall compute the
39 award before the fifteenth day of the following month.

40 (b) Except as provided in section 22 of this chapter, an award
41 must be paid not more than thirty (30) days after the date on which
42 the award is computed.

43 (c) Awards must be paid in the order in which the awards
44 become final.

45 Sec. 22. (a) If the fund would be reduced below two hundred
46 fifty thousand dollars (\$250,000) by payment in full of all awards
47 that become final in a month, the division shall suspend payment
48 of the claims that become final during the month and the following
49 two (2) months.

50 (b) At the end of the suspension period the division shall pay

1 the suspended claims. If the fund would be exhausted by payment
 2 in full of the suspended claims, the amount paid to each claimant
 3 shall be prorated.

4 Sec. 23. The state is not liable for a written determination
 5 made by the division under this chapter except to the extent money
 6 is available in the fund on the date the award is computed by the
 7 division under this chapter.

8 Sec. 24. The division may adopt rules under IC 4-22-2
 9 governing the computation and payment of awards under this
 10 chapter.

11 Sec. 25. A person who:

12 (1) files an application for an award under this chapter; and

13 (2) is convicted of forgery, fraud, or deception in connection
 14 with a claim under this chapter;

15 forfeits the award.

16 Sec. 26. The division may pay expenses incurred in
 17 administering this chapter only from money appropriated for that
 18 purpose from the fund.

19 SECTION 3. IC 6-3-2-20 IS ADDED TO THE INDIANA CODE
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2003]: Sec. 20. Amounts received under IC 5-2-6.2 are exempt
 22 from income taxes imposed by this article."

23 Renumber all SECTIONS consecutively.

(Reference is to ESB 0462 as printed March 28, 2003.)

Representative NOE